HSBC (M) Trustee Bhd v Kong Kim Hoh & Ors

HIGH COURT (KUALA LUMPUR) — ORIGINATING SUMMONS NO S2–24–47 OF 1999
KAMALANATHAN RATNAM J
30 JUNE 1999

Succession *— Letters of administration — Application for — Letters of administration de bonis non — Wife of deceased died intestate — Failure to transfer wife's estate to deceased before deceased's death — Bequest of whole of wife's property under deceased's will — Whether deceased entitled to whole of wife's property — Commencement of Distribution (Amendment) Act 1997 — Depends on whether steps were taken by administrator to distribute assets before commencement of Amendment Act — Whether beneficiary under will entitled only to interests of deceased while he was still alive — Whether grant exceeding deceased's entitlement of wife's property valid — Distribution (Amendment) Act 1997 ss 3 & 4*

On 12 November 1973, one Ng Foo Chee ('Ng') died intestate and letters of administration in respect of her estate was granted on 8 October 1974, issued to her husband, one Kong Siew Chong ('Kong'). By virtue of s 6(1)(i) of the Distribution Act 1958, on the death of Ng, her husband was the sole beneficiary of her estate. Kong died before he could complete the transfer of the property into his own name. However, Kong left a will dated 8 December 1986 ('the will'). Under cl 2(d) of the will, Kong instructed the applicant as executor of his estate to hold the property on trust for the benefit of his second wife, Wong Yoke Mooi ('Wong') and to allow Wong to live and reside on the property during her life time and the property be transferred to a hospital upon the demise of Wong. As at 31 August 1997, the law in relation to the distribution of intestate estates was amended by s 3 of the Distribution (Amendment) Act 1997 ('the 1997 Act'). The applicant filed an application to determine issues which arose in relation to an application for letters of administration de bonis non for the administration of the estate, inter alia: (i) the interpretation of s 4 of the 1997 Act as to when the distribution of the property of an intestate shall be deemed to have commenced and the extent of the estate that falls to be distributed; and (ii) the effect of cl 2(d) of the will.

Held:

(1) The distribution of the estate of a deceased who died intestate shall, pursuant to s 4 of the 1997 Act, be deemed to have commenced on the date on which steps had been taken by the administrator who had successfully extracted the grant of the letter of administration to transfer or distribute part of the assets of the estate, whereby only assets in relation to which steps have been taken to transfer or distribute shall proceed as if the 1997 Act had not been passed whereas the administration of the other assets in relation to which no steps have been taken to transfer or

distribute shall proceed in accordance with the provisions of the 1997 Act (see p 394D–E).

(2) Since the court has already directed that the distribution of the estate should fall within the ambit of the 1997 Act, then Kong would have only been entitled to one-third of the legal and beneficial interest in the property while the children of the marriage of Ng and Kong would be entitled as of right to two-thirds of the legal and beneficial interest in the property by virtue of s 3(e). If letters of administration de bonis non is granted to the applicant under these circumstances, then the applicant can only discharge cl 2(d) of the will to the extent of Kong's right to the property. In the circumstances, the direction in cl 2(d) of the will that upon the death of Wong, the hospital be entitled to the property could not be carried out (see p 395A–C).

(3) The living children from the marriage of Ng and Kong who were beneficially interested in two-thirds of the estate of Ng were entitled to a grant de bonis non in preference to the applicant whose beneficial interest was only equivalent to that of the late Kong while he was still alive (see p 396C).

(4) Section 30 of the Probate and Administration Act 1959 gives the court a wide discretion as to persons to whom administration is to be granted thus enabling the court to pass over a person otherwise entitled to a grant. Therefore, the court grant the applicant's prayer for an order that the first to fourth defendants, being the children from the marriage of Ng and Kong file a petition for letters of administration de bonis non within 14 days of this order, failing which the applicant be granted the right to petition for letters of administration de bonis non (see p 396G–H).

[Bahasa Malaysia summary

Pada 12 November 1973, seorang bernama Ng Foo Chee ('Ng') telah meninggal dunia tidak berwasiat dan surat kuasa mentadbir harta pusakanya telah diberi pada 8 Oktober 1974, kepada suaminya, bernama Kong Siew Chong ('Kong'). Menurut s 6(1)(i) Akta Pembahagian 1958, pada kematian Ng, suaminya adalah benefisiari tunggal harta pusakanya. Kong meninggal dunia sebelum beliau dapat menyempurnakan pindah milik harta tersebut kepada namanya. Akan tetapi, Kong telah meninggalkan wasiat bertarikh 8 Disember 1986 ('wasiat tersebut'). Di bawah fasal 2(d) wasiat tersebut, Kong mengarahkan pemohon sebagai wasi harta pusakanya untuk memegang harta sebagai pemegang amanah untuk faedah isteri keduanya, Wong Yoke Mooi ('Wong') dan membenarkan Wong untuk tinggal atas harta tersebut sepanjang hayatnya dan harta tersebut dipindahmilikkan kepada sebuah hospital atas kematian Wong. Pada 31 Ogos 1997, undang-undang berkaitan dengan harta pusaka tidak berwasiat telah dipinda oleh s 3 Akta Pembahagian (Pindaan) 1997 ('Akta 1997'). Pemohon telah memfailkan suatu permohonan untuk menentukan persoalan yang telah timbul

berhubung dengan permohonan untuk surat kuasa mentadbir harta pusaka geran de bonis non, antara lain: (i) tafsiran s 4 Akta 1997 mengenai bila pembahagian harta seseorang yang tidak berwasiat harus dianggap telah bermula and setakat mana harta pusaka tersebut harus dibahagikan; dan (ii) kesan fasal 2(d) wasiat tersebut.

Diputuskan:

(1) Pembahagian harta pusaka si mati yang tidak berwasiat harus, menurut s 4 Akta 1997, dianggap telah bermula pada tarikh di mana langkah-langkah telah diambil oleh wasi yang telah berjaya mengeluarkan surat kuasa mentadbir untuk memindahmilik atau membahagikan sebahagian aset harta pusaka, di mana hanya aset-aset yang berkaitan dengan langkah-langkah yang telah diambil untuk memindahmilik atau membahagikan akan dilaksanakan seolah-olah Akta 1997 belum diluluskan sementara pentadbiran aset-aset lain di mana tiada langkah-langkah telah di ambil untuk memindahmilik atau membahagikan akan dilaksanakan menurut peruntukan Akta 1997 (lihat ms 394D–E).

(2) Oleh kerana mahkamah telah mengarahkan bahawa pembahagian harta pusaka seharusnya menurut bidang Akta 1997, maka Kong hanya berhak ke atas satu pertiga kepentingan undang-undang dan kepentingan benefisial harta tersebut sementara anak-anak dari perkahwinan Ng dan Kong akan berhak ke atas dua pertiga dari kepentingan undang-undang dan kepentingan benefisial dalam harta tersebut menurut s 3(e). Jika surat kuasa mentadbir geran de bonis non diberikan kepada pemohon dalam keadaan sebegini, maka pemohon hanya boleh mematuhi fasal 2(d) wasiat tersebut setakat hak Kong ke atas harta tersebut. Dalam keadaan begini, arahan fasal 2(d) wasiat tersebut bahawa pada kematian Wong, hospital adalah berhak ke atas harta tersebut tidak boleh dilaksanakan (lihat ms 395A–C).

(3) Anak-anak yang masih hidup dari perkahwinan Ng dan Kong yang mempunyai kepentingan benefisial ke atas dua pertiga harta pusaka Ng adalah berhak untuk mendapatkan geran de bonis non secara keutamaan ke atas pemohon yang kepentingan benefisialnya hanya adalah setara dengan kepentingan mendiang Kong semasa beliau masih hidup (lihat ms 396C).

(4) Seksyen 30 Akta Probet dan Pentadbiran 1959 memberi mahkamah budi bicara yang luas berkenaan siapa yang berhak diberi pentadbiran, maka dengan itu membolehkan mahkamah untuk melangkau seseorang yang sebaliknya berhak untuk sesuatu geran. Maka, mahkamah membenarkan permohonan pemohon untuk suatu perintah bahawa defendan-defendan pertama hingga keempat, yang merupakan anak-anak dari perkahwinan Ng dan Kong memfailkan suatu petisyen untuk surat wakil kuasa de bonis non dalam masa 14 hari dari tarikh perintah ini, sekiranya gagal, pemohon diberi hak untuk mempetisyen surat wakil kuasa de bonis non (lihat ms 396G–H).]

Notes

For cases on letters of administration generally, see 11 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 1902–1963.

Cases referred to

Easterbrook v Young (1977) 136 CLR 308 (refd)
Soundara Achi v Kalyani Achi & Ors [1953] MLJ 147 (refd)
Yap Kee Par v Molly Yap & Ors [1996] 4 MLJ 219 (refd)

Legislation referred to

Administration of Estates Act 1925 s 55(1)(iii) [UK]
Distribution Act 1958 ss 4, (1), 6, (1)(i)–(iv), (e), 8
Distribution Enactment (Cap 71) s 4(i)
Distribution (Amendment) Act 1997 ss 3, (e), 4
Interpretation Act 1948 and 1967 s 34
Probate and Administration Act 1959 ss 2, 23, 24, 30
Probate and Administration Enactment (Cap 8) s 102
Testator's Family Maintenance and Guardianship of Infants Act 1916 s 3(1A) (NSW)
Wills Probate and Administration Act 1898 (NSW)

MY Tan (Skrine & Co) for teh applicant.
Kumar Wilfred (Raslan Loong) for the defendants.

Cur Adv Vult

Kamalanathan Ratnam J:

Facts

An ex parte originating summons was filed by HSBC (M) Trustee Bhd ('the applicant') to determine a number of questions which arose in relation to an application for letters of administration de bonis non for the administration of the estate of one Ng Foo Chee (f) deceased.

The said Ng Foo Chee (f) died intestate on 12 November 1973. Letters of administration in respect of the estate of Ng Foo Chee ('the grant of Ng Foo Chee') was granted on 8 October 1974 and it was issued to her husband, one Kong Siew Chong on 27 January 1977.

According to the grant of Ng Foo Chee, the estate of Ng Foo Chee only comprised of a landed property held under title deed CT8853 (now known as Grant 11225), Lot 13 of Section 86A of the Town and District of Kuala Lumpur bearing the postal address No 27, Jalan Pahang, 53000 Kuala Lumpur ('the property').

By virtue of s 6(1)(i) of the Distribution Act 1958 on the death of Ng Foo Chee on 12 November 1973, one Kong Siew Chong (the deceased's husband) was the sole beneficiary of the estate of Ng Foo Chee. The said section reads as follows:

> After the commencement of this Act, if any person shall die intestate as to any property to which he is beneficially entitled for an interest which does not cease on his death, such property or the proceeds thereof after payment thereout of the expenses of due administration shall, subject to the provisions of s 4, be distributed in the manner or be held on the trusts mentioned in this section, namely —
>
> (i) If a woman die intestate leaving a husband, the whole of her estate shall go to him.

The property was then transferred and registered in the name of 'Kong Siew Chong as representative'. However, Kong Siew Chong died on 9 July 1990 before he could complete the transfer of the property into his own name. Kong Siew Chong, however, left a will dated 8 December 1986 ('the will'). The grant of probate for the estate of Kong Siew Chong dated 9 April 1991 was issued to the applicant as the executor and sole trustee named in the will.

Pursuant to cl 2(d) of the will, Kong Siew Chong instructed the applicant, as the executor of his estate, to hold the property on trust for the benefit of his second wife, Wong Yoke Mooi, and to allow the said Wong Yoke Mooi to live and reside on the said property during her lifetime, and that the said property be transferred to Selangor Tung Shin Hospital upon the demise of the said Wong Yoke Mooi.

However, as at 31 August 1997 ('the effective date') the law in relation to the distribution of intestate estates as set out in s 6(1)(i) to (iv) of the Distribution Act 1958 was amended by s 3 of the Distribution (Amendment) Act 1997. The new s 6(e) reads as follows:

> if an intestate dies leaving a spouse and issue but no parent or parents, the surviving spouse shall be entitled to one-third of the estate and the issue the remaining two-thirds.

In the course of discharging their duties pursuant to para 2(d) of the will, the applicant made an application to this court for the grant of letters of administration de bonis non ('the petition') in respect of the estate of Ng Foo Chee for the purpose of transferring the property into the name of the applicant as the executor of the estate of Kong Siew Chong. 'De bonis non administratis' is the full Latin name for a special type of grant which is made to a representative to enable the administration of an estate to be completed where all the persons to whom a grant of probate or administration has been made have died without completing administration (see Williams, Mortimer and Sunnucks: *Executors, Administrators and Probate* (17th Ed) at p 337).

At the hearing of the said petition before the learned deputy registrar ('DR'), the DR took the view that the distribution of the property falls within the ambit of the Distribution (Amendment) Act 1997. Therefore, the DR was of the view that pursuant to the new s 6(e) of the Distribution Act 1958, the applicant had to amend the said petition to reflect the interest of the children of the marriage between Ng Foo Chee and Kong Siew Chong as beneficiaries of the estate of Ng Foo Chee.

The application

This application is filed because the applicant is uncertain as to the relevant law of distribution under which the property should fall to be distributed. This is because of the savings provision in s 4 of the Distribution (Amendment) Act 1997 which reads as follows:

> Any distribution of the property of an intestate that has been commenced before the commencement of this Act shall be continued or concluded in all respects as if this Act had not been passed.

At the first hearing of the application on 9 March 1999, the hearing was adjourned to allow the applicant to serve the cause papers on parties potentially affected by the orders to be made herein, that is, the children of the marriage between Ng Foo Chee and Kong Siew Chong, the second wife Wong Yoke Mooi, and Selangor Tung Shin Hospital. Wong Yoke Mooi and Selangor Tung Shin Hospital have not intervened to participate in these proceedings. Four children and one son of a deceased son from the marriage between Ng Foo Chee and Kong Siew Chong have intervened.

Findings of the court

(1) First direction prayed for

The first relief prayed for is a direction as to the interpretation of s 4 of the Distribution (Amendment) Act 1997 as to when the distribution of the property of an intestate shall be deemed to have commenced and the extent of the estate that falls to be distributed under the relevant distribution regime. The answer depends primarily upon the legal meanings attached to the words 'distribution' and 'property' in the context of s 4 as a savings provision.

In the context of succession law, the word 'distribution' in relation to 'commencement of distribution' could be construed as referring to any of the steps from the time of the grant of letters of administration to the final effective disposal of the property by an administrator. The possible points of 'distribution' are as follows:

(i) The grant of letters of administration in respect of the deceased estate to the administrator; or

(ii) The extraction of the grant of letters of administration in respect of the deceased estate by the administrator; or

(iii) The completion of the administrator's duty to pay all the funeral and testamentary expenses and the debts of the deceased out of the property; or

(iv) The actual and effective disposal of such residual property to those who are beneficially entitled to it, in the sense of vesting of the proprietary rights to the property.

The word 'property' in s 4 may be interpreted in three possible ways, depending on the nature of the estate involved and the meaning of the word 'distribution' as it is used in that section. These are:

(i) The entire estate.

(ii) The entire estate remaining after all the funeral and testamentary expenses and the debts of the deceased have been paid.

(iii) The particular assets forming part of the estate, either in its entirety or after all the funeral and testamentary expenses and the debts of the deceased have been paid.

In construing an enactment, the text in its setting within the Act is to be regarded as the pre-eminent indication of the legislator's intention. Prima facie, the meaning of the enactment which was intended by the legislator is therefore, taken to be that which corresponds to the literal meaning. Therefore, the starting point lies in determining the literal meaning of the words or phrases in question. In doing so, the first question to ask always is what is the natural or ordinary meaning of that word or phrase in its context in the said Act (see Bennion, Francis: *Statutory Interpretation* (3rd Ed, 1997) at pp 665 and 671). The ordinary meaning of a word is its proper and most known signification and if there is more than one meaning, then the most common and well established is preferred.

A word or phrase in an enactment must always be construed in the light of surrounding words. Unless the contrary appears, three principles should be applied for the construction of the literal meaning of an enactment as a whole. These are that every word should be given a meaning, the same word should be given the same meaning and different words should be given different meanings (also see pp 897–898). Thus, where the context makes it clear that the term has a particular meaning in one place, it will have to be taken to have that meaning elsewhere. Similarly, a variation in the term used is taken to denote a different meaning.

In this context it is relevant to note that s 34 of the Interpretation Act 1948 adn 1967 provides that where a written law amends another written law, the amending legislation shall be read and construed as one with the amended law. Therefore, s 4 of the Distribution (Amendment) Act 1997 must be construed not only within the context of the whole amending Act, but also in the context of the principal Distribution Act 1958 as a whole, in order to determine the true legislative intendment of the provision in question.

The word 'distribution' is not defined in the Distribution (Amendment) Act 1997 or its principal legislation. *Halsbury's Laws of England* refers to s 55(1)(iii) of the UK Administration of Estates Act 1925 which provides that 'disposition' includes a conveyance of property contained in a will, and 'dispose of' has a corresponding meaning.

The word 'distribution' is 'the transfer of ... property where the ... recipient is entitled to ... the property because of the recipient's status as ... beneficiary' (see *Butterworths Australian Legal Dictionary* (1997 Ed) at p 374). The word 'distribute' is given the meaning 'to divide and pay out from a deceased estate ... the estate property to those entitled according to the scheme of distribution under intestacy legislation' (also see *Butterworths Australian Legal Dictionary* (1997 Ed) at p 374). In the relevant context, the phrase 'final distribution of the estate' is given the meaning 'the point in

time at which the personal representative, having completed the administration of the deceased estate becomes a trustee of the estate assets' (see ibid at p 473). In *Easterbrook v Young* (1977) 136 CLR 308, the High Court of Australia gave effect to this interpretation of 'final distribution of the estate'. A

It is my judgment therefore that for the purposes of construing s 4 of the Distribution (Amendment) Act 1997 the reasoning of the High Court of Australia in *Easterbrook v Young* should be followed although the enactment construed in that case is not in pari materia with our s 4. I accept the clear pronouncement of the interpretation of the word 'distribution' in the context of a deceased estate as stated in that case where the appellant had applied to the Supreme Court of New South Wales under the Testator's Family Maintenance and Guardianship of Infants Act 1916 (NSW) for an order to extend time to apply to the court under s 3(1A) of the Act for her maintenance out of the estate of her late husband. The deceased had left a cottage which had been duly transmitted to the name of the administrator pursuant to the grant of letters of administration to the respondent, one of the two sons of the marriage. The interpretation of the word 'distribution' arose because the court had been empowered to extend the time limit for the making of such an application under the Act, but only if the application is made before the final distribution of the estate. B C D

The Court in *Easterbrook v Young* referred to the fact that in the Wills, Probate and Administration Act 1898 (NSW) the word 'distribute' is used in the sense of a physical parting with the asset, that is, by delivery or by transfer of title and that the words 'distribute' and 'distribution' are not used in the sense of a change in the capacity in which the personal representative held the asset, but in the sense of a physical parting with that asset and its placing in the hands or name of an intended beneficiary. Considering the meaning of the words 'distribute' and 'distribution' as used in the Wills, Probate and Administration Act 1898 and in furtherance of the policy of the Testator's Family Maintenance and Guardianship of Infants Act 1916, the court held that 'only when the personal representative has parted with all the assets which came to his hands by the grant of probate or letters of administration that there has been a final distribution of the estate of the testator or intestate' to enable the court to allow the extension of time. E F G

In *Soundara Achi v Kalyani Achi & Ors* [1953] MLJ 147 at p 149 the court considered the interpretation of s 4(i) of the Distribution Enactment (Cap 71) which is in pari materia with s 4(1) of the Distribution Act 1958. It states: H

> The distribution of the movable property of a person deceased shall be regulated by the law of the country in which he had his domicile at the time of his death.

It was held in *Soundara Achi* that the administration of the property of a deceased person can be conveniently divided for the purposes of discussion into two parts. Thomson J (as he then was) said at p 149 as follows: I

A

> The first is the getting in of the deceased's property and the payment of his debts. The second is the distribution of what is left to the persons beneficially entitled to it.

Furthermore, Thomson J also held that at the second stage of the process of administration of the deceased estate, the relevant distribution law in force was the Distribution Enactment (Cap 71) which 'contains the local law relating to intestate succession and which contains the law by which the administrator must be guided when he reaches the stage in his duties when he is required by s 102 of the Probate and Administration Enactment (Cap 8) 'to hand over the residue of the estate (if any) to the person or persons entitled thereto'.

B

C

Thomson J also said at p 150:

> To my mind 'the distribution of the movable property' can only refer to the distribution to the persons beneficially entitled thereto of so much of the movable property of the deceased person as remains in the hands of the legal representative after paying the debts of the deceased and the expenses of administration.

D

To my mind the statement of the law as propounded by Thomson J in *Soundara Achi* is also applicable to the present distribution law in s 6(1) which is subject to s 4 of the same Act, to conclude that 'distribution' refers to a step in the process of 'administration' of a deceased estate that is entrusted to an administrator with the grant of letters of administration, but which can only commence after all due debts and testamentary duties are settled. Furthermore, s 2 of the present Probate and Administration Act 1959 defines the word 'administration' with reference to the estate of a deceased person as 'letters of administration issued by the court whether general or limited or with the will annexed or otherwise authorizing the person or persons therein named to administer the deceased person's estate in accordance with law'.

E

F

It is my judgment therefore that the commencement of 'distribution' of property does not commence with the grant of letters of administration, which only marks the commencement of the process of administration. Therefore, the word 'distribution' in the context of s 4 of the Distribution (Amendment) Act 1997 refers to the commencement of a step required to effect the actual transfer or disposal of the property to those beneficiaries who are entitled according to the relevant law of distribution.

G

In relation to the distribution of land however, the question arises as to what the determinative step is, considering that the transfer of real property may involve a lengthy process. The possible points of commencement of the transfer of land for the purposes of intestate distribution by the administrator of a deceased estate are:

H

(i) The signing of the memorandum of transfer by the administrator.

(ii) The lodgement of the duly executed transfer with the certificate of title and other relevant documentation at the land titles registry for registration.

I

(iii) The actual registration of the title itself on the Register of Titles.

I hold that distribution of land should be deemed to have commenced as soon as an immediately registrable instrument is in existence, that is, when the transfer is executed with the administrator's signature.

Meaning of 'Property' in s 4

Neither the Distribution Act 1958 nor the Distribution (Amendment) Act 1997 contain definitions of the words 'property' and 'estate' although these words are clearly distinguishable in their application within the Acts. For example, the preamble to the Distribution Act 1958 states that it is 'an Act relating to the law of distribution of intestate estates' while s 4 is a provision which regulates the distribution of movable and immovable 'property'. Both the words also appear within the same section in the amended s 6 of the Distribution Act 1958.

The words 'estate' and 'property' are defined in s 2 of the Probate and Administration Act 1959, although they are not very enlightening for the purposes of construing s 4 of the Distribution (Amendment) Act 1997. Accordingly, 'estate' is defined as all properties which if a person died intestate would vest in the Chief Justice under s 39; and 'property' as including a thing in action and any interest in movable or immovable property.

Relying again on the judgment of Thomson J in *Soundara Achi*, I hold that the word 'estate' is not used as meaning all the 'property' possessed by the deceased at the time of his death but only so much of the 'property' as is left after payment thereout of the expenses of due administration as prescribed.

For the purposes of construing s 4 of the Distribution (Amendment) Act 1997 however, the question remains as to whether the commencement of distribution of any asset forming part of the entire estate after all the funeral and testamentary expenses and the debts of the deceased have been paid (the partially administered estate) prior to the effective date is sufficient to preclude the operation of the Distribution (Amendment) Act 1997 in relation to the distribution of the rest of the partially administered estate, notwithstanding that the distribution of those assets may be commenced after the effective date. In other words, it is not clear whether 'property' in the context of s 4 of the Act refers only to individual assets if there is more than one asset forming part of the partially administered estate available for distribution.

I hold that the word 'property' in s 4 of the Distribution (Amendment) Act 1997 should be construed as referring to the specific assets as comprising the partially administered estate. This is because the rule of statutory interpretation states that a word or phrase in an enactment must always be construed in the light of surrounding words and that unless the contrary appears, the same word should be given the same meaning and different words should be given different meanings. As the particular meaning of the word 'estate' has been made clear in the judgment of Thomson J in *Soundara Achi* as referring to the entire partially administered estate, the word 'property' in s 4 could not have been intended by Parliament to mean the same.

A However, it is noted that s 8 of the Distribution Act 1958 contains a provision which appear to indicate that the word 'property' could equally be interpreted more widely, that is, as the partially administered estate in its entirely. It reads as follows:

> Where any person dies leaving a will beneficially disposing of part of his
B property, the provisions of this Act shall have effect as respects the part of his property not so disposed of, subject to the provisions contained in the will:
>
> Provided that the personal representative shall, subject to his rights and powers for the purposes of administration, be a trustee for the persons entitled under this Act in respect of the part of the estate not expressly disposed of unless it appears by the will that the personal representative is entitled to take
C such part beneficially.

Taking the purposive approach to statutory interpretation into consideration it is my judgment that although the purpose of the Distribution (Amendment) Act 1997 is to modify the entitlements of the beneficiaries of a deceased and that a narrow interpretation of the word
D 'property' (as specific assets only) is more likely to give effect to this legislative intention, it must be remembered that the word 'property' here is being construed in the context of a savings provision, that is, a provision which is intended to narrow the effect of the repealing provision to which it refers so as to preserve some existing legal rule or right from its operation (see Bennion, Francis *Statutory Interpretation* (3rd Ed, 1997) at pp 558,
E 559). In other words, a narrow interpretation of the word 'property' may potentially have a draconian effect on the accrued rights of beneficiaries under the old distribution regime, as in the present case.

The question before the court therefore is to provide a direction as to which legislative presumption to adopt in this case. On the one hand,
F different words should have different meanings and therefore 'property' cannot be construed as 'estate'. On the other hand, the purpose of a savings provision is to preserve existing rights and this is best served by construing 'property' as 'estate'.

A savings clause was considered in the case of *Sykt Telekom Malaysia*
G *Bhd v Business China Directory Sdn Bhd* (see Kuala Lumpur High Court 25 June 1993 reported in 11 *Mallal's Digest* (4th Ed, 1996 Reissue) para 1513) where Mokhtar Sidin J (as he then was) held that the purpose of a savings clause is to protect the interests of persons whose rights are affected by the repeal of a statutory provision. However, the learned judge also held that there was a duty upon the court to determine if a savings
H clause is so wide as to annul the effect of the general repealing provisions and that if it was indeed so wide, the 'savings clause' should be given no effect.

I find that the case *of Syarikat Telekom Malaysia Bhd* provides useful guidance as to the approach to be taken with regard to savings provisions.
I However, the savings clause in s 4 of the Distribution (Amendment) Act 1997 should not be construed too widely 'so as to annul the intention of the repealing provisions' if the word 'property' is to mean the entire partially administered estate.

On a balance therefore and using the canons of interpretation applied to arrive at the true legislative intention, it is my judgment that the word 'property' should nevertheless be given the narrow interpretation, that is, as referring to the specific assets of the deceased that are available for distribution only. This is because the construction of the word 'distribution' effectively delays the operation of the repealing provisions to preserve existing rights. While it is conceded that it still carries a potentially draconian effect on the rights of beneficiaries whose accrued rights would be adversely affected by the commencement of the new laws of intestate succession if administrators are too slow in administering the estate after letters of administration have been granted, this is not a persuasive argument against construing the words expressly used by the drafters of the Distribution Act 1958 and Distribution (Amendment) Act 1997 in a consistent fashion.

It is my judgment therefore that the answer to the first prayer in the amended originating summons is that the proper construction of the said s 4 is that:

(1) The distribution of the estate of a deceased who died intestate shall, pursuant to s 4 of the Distribution (Amendment) Act 1997, be deemed to have commenced on the date on which steps had been taken by the administrator who had successfully extracted the grant of the letter of administration to transfer or distribute part of the assets of the estate, whereby only assets in relation to which steps have been taken to transfer or distribute shall proceed as if the Distribution (Amendment) Act 1997 had not been passed whereas the administration of the other assets in relation to which no steps have been taken to transfer or distribute shall proceed in accordance with the provisions of the Distribution (Amendment) Act 1997.

(2) Second direction prayed for

Based on my findings as stated earlier it is my judgment that the administration of the estate of Ng Foo Chee should be continued or concluded according to the provisions of the Distribution (Amendment) Act 1997.

(3) Third direction prayed for

The relief sought in prayer 3 in the amended originating summons is for a direction as to the effect of cl 2(d) of the will of the late Kong Siew Chong in the event that the administration of the estate of Ng Foo Chee must be done in accordance with the provisions of the Distribution (Amendment) Act 1997.

Pursuant to cl 2(d) of the said will, Kong Siew Chong bequeathed that the property be held on trust for the benefit of his second wife, Wong Yoke Mooi, to allow her to live and reside on the said property during her lifetime and to have the property transferred to Selangor Tung Shin Hospital upon her death.

Since I have already directed that the distribution of the estate of Ng Foo Chee should fall within the ambit of the Distribution (Amendment) Act 1997, then Kong Siew Chong would have only been entitled to one-third of the legal and beneficial interest in the property while the children of the marriage of Ng Foo Chee and Kong Siew Chong would be entitled as of right to two-thirds of the legal and beneficial interest in the property (see s 3(e) of the Distribution (Amendment) Act 1997).

If letters of administration de bonis non is granted to the applicant under these circumstances, then the applicant can only discharge cl 2(d) of the will to the extent of Kong Siew Chong's right to the property.

In the circumstances I hold that the direction in cl 2(d) of the will that upon the death of Wong Yoke Mooi, Tung Shin Hospital be entitled to the property cannot be carried out.

As to the direction in cl 2(d) of the will that Wong Yoke Mooi be allowed to reside on the property during her lifetime, it is doubtful if this can be carried out if there is objection by the children from the marriage of Ng Foo Chee and Kong Siew Chong. It may also be arguable that these children's rights may be tempered by equity. However, it is not appropriate at this stage to decide on this issue.

(4) Fourth direction prayed for

This is a prayer for the court to decide as to whether the letters of administration de bonis non may be limited only to the property in question.

Grants de bonis non may be limited in the same way as other grants, including a limitation as to property (see Williams, Mortimer and Sunnucks: *Executors, Administrators and Probate* (17th Ed) at p 338). Sections 23 and 24 of the Probate and Administration Act 1959 sets out the relevant circumstances where such a limitation may be applicable in the case of an intestacy:

> 23 In any case in which it appears necessary for preserving the property of a deceased person, the Court may grant to any person whom the Court thinks fit, or to the Corporation, letters of administration limited to the collection and preservation of the property of the deceased, and giving discharge of debts due to his estate, subject to the directions of the Court; and the person so appointed shall have power to dispose of all assets of the estate of a wasting or perishable nature and invest the proceeds of sale.
>
> 24 A grant of probate or letters of administration may be made subject to such exception as the will or the circumstances of the case require; and in any such case a further grant may be made of the part of the estate so excepted.

It is my judgment therefore that the grant of letters of administration de bonis non to the applicant be limited only to the landed property held under title deed CT8853 (now known as Grant 11225), Lot 13 of Section 86A of the Town and District of Kuala Lumpur bearing the postal address of No 27, Jalan Pahang, 53000 Kuala Lumpur.

(5) Fifth order prayed for

Here the applicant seeks any other order or direction that the court deems appropriate.

It has been explained that in order to discharge Kong Siew Chong's bequest in the will, it is necessary for the applicant to obtain a grant of letters of administration de bonis non. The priority to petition for the grant is determined by the priority of the entitlement to the estate according to the laws of intestate succession according to *Yap Kee Par v Molly Yap & Ors* [1996] 4 MLJ 219 at p 224. Since I have held that the distribution of the estate of Ng Foo Chee should proceed in accordance with the Distribution (Amendment) Act 1997, then the living children from the marriage of Ng Foo Chee and Kong Siew Chong who are beneficially interested in two-thirds of the estate of Ng Foo Chee, are entitled to a grant de bonis non in preference to the applicant whose beneficial interest is only equivalent to that of the late Kong Siew Chong while he was still alive.

In the case of *Yap Kee Par*, the deceased died intestate leaving behind his second wife and four children. The second wife of the deceased was the stepmother of the four children, one of whom applied for letters of administration of the estate of the deceased and cited the other beneficiaries (the stepmother and the three other children) who resisted the application without valid reason and refused to apply for letters of administration. Citing G Raman on *Probate and Administration in Singapore and Malaysia: Law and Practice*, the court allowed the petitioner to take out letters of administration as the sole administrator. The passage cited reads as follows:

> Where a person who has a prior right to grant of probate or administration delays or declines to take it, but will not renounce his right, he may be cited by a person having a right which is inferior to his, to accept or refuse the grant. This normally takes place where a person who is entitled to petition for letters of administration fails or neglects to do so, and as a result the administration of the estate is held up. This may cause loss to the beneficiaries of the estate, and it is to prevent waste that such citations are normally filed.

It is my judgment that the decision in *Yap Kee Par* applies equally to the case before me and that s 30 of the Probate and Administration Act 1950 gives the court a wide discretion as to persons to whom administration is to be granted, thus enabling the court to pass over a person otherwise entitled to a grant.

I therefore grant the applicant's prayer for an order that the first to fourth defendants, being the children from the marriage of Ng Foo Chee and Kong Siew Chong file a petition for letters of administration de bonis non within 14 days of this order, failing which the applicant be granted the right to petition for letters of administration de bonis non.

Order accordingly.

Reported by Jafisah Jaafar